IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.33157 of 1998

Between:

1 K.Prameela Rani, W/o Sanyasi Rao
R/o.Chodavaram, Visakhapatnam District
2 B.Venkat Rao S/o.Venkaiah
R/o.Chodavaram, Visakhapatnam Dist.
3 D.Venkata Narasimha Rao S/o.Appa Rao
R/o.Chodavaram, Visakhapatnam Dist.
4 John Babu S/o.Narayana
R/o.Chodavaram, Visakhapatnam Dist.

..... PETITIONERS

AND

1 The Secretary of Govt., Legislative Affairs & Justice
State of A.P., Hyderabad
2 Director of Prosecution, State of A.P., Hyderabad
3 Chairman, State Level Police Recruitment Board, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or writ more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not appointing the petitioners as Asst. Public Prosecutors' Grade-II in pursuance of G.O.Ms.No.436, dt.15/10/1996 and not giving preference as per G.O.Ms.No.200 dt.28/11/95 is wholly illegal, arbitrary and unjust; and contrary to Article 14, 16 of Constitution of India of India; and consequently direct the respondents to appoint the petitioners in the post belongs to STs in Accordance with GO Ms No.436 dt.15/10/1996.

Counsel for the Petitioner: Mr. V.PADMANABHA RAO

Counsel for the Respondents: GP FOR HOME

The Court made the following :

O R D E R:

The question that falls for consideration in this writ petition is as to whether the petitioners, who belong to Scheduled Caste category, could have been considered in the backlog vacancies of Scheduled Tribe category, by way of conversion ?

According to the petitioners, they belong to Scheduled Caste community. They had put in more than three years of standing at the Bar and have been working in the Public Prosecutors' Offices in their respective places. They possess the requisite qualifications for the post of Assistant Public Prosecutor Grade-II. While so, the 3rd respondent-Board issued notification (first) in the local newspapers on 3-2-1997 notifying 10 backlog vacancies of Assistant public Prosecutors Grade-II for Scheduled Tribe candidates. On the very same day, another notification (second) was issued calling for applications for filling up of 56 posts of Assistant Public Prosecutors Grade-II. Among 56 vacancies, 2 vacancies were reserved for ST, 9 for SC, 14 for Backward Classes, 3 for Physically Handicapped and the remaining 28 vacancies for open category. While so, the 3rd respondent issued another notification (third) on 15-3-1997 notifying 85 vacancies of Assistant Public Prosecutors Grade-II – 8 for ST, 12 for SC, 22 for Backward Classes, 2 for Physically Handicapped and the rest 41 vacancies for Open Category. Thus, in all, 20 vacancies were reserved for ST and 22 for SC candidates in all the three notifications put together.

It is the case of the petitioners that the 3rd respondent clubbed all the posts notified in the three notifications and conducted a common written examination on 1-6-1997. The total marks for the examination are 225 i.e. 200 for the written examination and 25 for oral interview. They got through the written examination and were interviewed on 17/18-10-1997. Thereafter, 1st respondent issued G.O.Ms.No.81, dated 16-5-1998 selecting 85 candidates for the post of Assistant Public Prosecutor Grade-II, including 21 SC candidates, but they were not selected. However, no ST candidate appeared for the examination. Therefore, the vacancies reserved for ST category were kept vacant. Though 42 SC candidates appeared for interview after being successful in the written examination, only 21candidates were selected in SC

category. The procedure to fill up vacancies as specified in the notification was followed, but the vacancies reserved for ST candidates have not been filled up because of non-availability of ST candidates. Government of Andhra Pradesh issued G.O.Ms.No.436, General Administration (Services-D) Department, dated 15-10-1996, according to which, if a candidate belonging to ST category is not available, the same may be filled up by a candidate belonging to SC. So also, if no candidate belonging to SC is available, it may be filled up with a candidate belonging to ST. In the instant case, the appointing authority totally ignored the Proviso to Rule 22(2)(h)(II) of A.P. State and Subordinate Service Rules,1996 issued in G.O.Ms.No.436, dt.15-10-1996 and failed to fill up the vacancies earmarked for ST with the candidates belonging to SC and the same is arbitrary and illegal.

Separate and detailed counter affidavits have been filed by respondents 2 and 3. In the counter affidavit filed by the 2nd respondent, it is *inter alia* stated that after the Special Rules for A.P. State Prosecution Service Rules,1992 came into force, only two recruitments were made i.e. in the year 1992 and the present recruitment in the year 1997. The first notification was issued on 12-10-1992 for general recruitment. In this recruitment, 10 posts of Assistant Public Prosecutors Grade-II meant for ST could not be filled up. Therefore, a limited recruitment notification was issued on 3-2-1997 for filling up of the said vacancies. Even in this recruitment also, ST candidates were not available. The other two notifications dated 3-2-1997 and 15-3-1997 relate to general recruitment for filling up of the vacancies that arose after the first recruitment notified on 12-10-1992. As such, these general recruitments cannot be taken into consideration for the purpose of Second Proviso to Rule 22(2)(h)(II) of the A.P. State and Subordinate Service Rules,1996. In fact, to invoke the said Rule, another two limited recruitments have to be conducted. Therefore, the said Rule cannot be applied in favour of the petitioners, as no three succeeding recruitments took place under the Special Rules for A.P. State Prosecution Services. The petitioners are not entitled for appointment against ST vacancies by converting them as SC vacancies, since no three successive recruitments were conducted.

In their counter affidavit respondent No.3 - State Level Police Recruitment Board - also stated to the same effect. The Board further explained that as per Rule 22(2)(h)(II) of G.O.Ms.No.436, dated 15-10-1996 where any vacancies reserved for SCs or as the case may be for STs, are so filled by candidates belonging to other

communities, an equal number of vacancies shall be reserved in the succeeding recruitment for the SCs or as the case may be for STs, in addition to the vacancies that may be available for that recruitment for the SCs or as the case may be for STs and if in the said succeeding recruitment also, qualified candidates belonging to SCs, or as the case may be STs., are not available for appointment to all or any of the additional vacancies, which are so reserved in that succeeding recruitment, an equal number of vacancies shall again be reserved in the next succeeding recruitment for the SCs, or as the case may be for STs., in addition to the number of vacancies that may be available for the next succeeding recruitment for the SCs, or as the case may be for STs. The second proviso to the said Rule contemplates that in the third succeeding recruitment, if qualified candidates belonging to STs or as the case may be SCs, are not available, a vacancy reserved to be filled by a candidate belonging to ST may be filled by a candidate belonging to SC and a vacancy reserved to be filled by a candidate belonging to SC may be filled by a candidate belonging to ST. The third proviso states that if after three successive recruitments, no candidate belonging to SC or ST is available such vacancy will be treated as dereserved. Hence, the contention of the petitioners that the action of the respondents is illegal, arbitrary and contrary to the spirit of G.O.Ms.No.436, dated 15-10-1996 is untenable.

Heard both sides.

The main grievance of the petitioners is that in three successive recruitments, the posts of Assistant Public Prosecutors Grade-II reserved for ST category could not be filled up, since candidates in that category were not available; therefore, their cases ought to have been considered for being appointed against those vacancies meant for ST category, as they are fully qualified and successful in the written examination. The respondents have categorically asserted that the vacancies meant for ST candidates were not carried forward for three successive recruitments. In fact, A.P. State Prosecution Services Rules,1992 have come into force only in 1992 and first time the vacancies were notified on 12-10-1992 for general recruitment and there was no ST candidate available for 10 ST posts. Therefore, the limited recruitment was notified on 3-2-1997 for filling up of the above 10 vacancies. Even in this limited recruitment in 1997, sufficient number of ST candidates were not available. The other two notifications dated 3-2-1997 and 15-3-1997 relate to general recruitment for filling up of the vacancies that arose after the first recruitment notification dated

12-10-1992. As such, this general recruitment cannot be taken into consideration for the purpose of second proviso to Rule 22(2)(h)(II) of the A.P. State and Subordinate Service Rules,1996, which reads as under:

> "Provided further that in the third succeeding recruitment, if qualified candidates belonging to Scheduled Tribes or as the case may be Scheduled Castes are not available, a vacancy reserved to be filled by a candidate belonging to Scheduled Tribes may be filled by a candidate belonging to Scheduled Castes and a vacancy reserved to be filled by a candidate belonging to Scheduled Castes may be filled by a candidate belonging to scheduled Tribes and if a qualified candidate belonging to a particular group of Backward Classes (Group-A), (Group-B), (Group-C) and as the case may be (Group-D) is not available for appointment, the vacancy reserved to that group shall accrue to the next group"

Therefore, the contention of the petitioners that the vacancies meant for STs were carried forward for three successive recruitments and since there were no candidates available in the ST category, their cases ought to have been considered against those vacancies cannot be accepted. There are two hurdles in the way of the petitioners; firstly, satisfying the criterion of second proviso to Rule 22(2)(h)(II) of the A.P.State and Subordinate Service Rules and secondly, dereserving of such vacancies for the purpose of filling up the said vacancies from the candidates of SC category like the petitioners. Since the first criterion of notifying ST vacancies for third successive recruitment itself is not satisfied, the question of denotifying such vacancies and offering the same to the petitioners does not arise. Learned counsel for the petitioners relied upon a reported Judgment of the Apex Court in **MALKHAN SINGH v. UNION OF INDIA** in which it was held as under:

> "6. It is the contention of the petitioner that this was the third recruitment year of carrying forward a vacancy meant for a Scheduled Tribe candidate. As per the relevant rules and instructions applicable to this roster, in the third year of carry forward, the Scheduled Tribe vacancy was exchangeable with a Scheduled Caste vacancy. Hence he being on the select panel in that year for a Scheduled Caste candidate, should have been appointed to the vacancy which was meant for a Scheduled Tribe candidate by exchanging it for a Scheduled Caste candidate.
>
> 7..... A proposal, however, for dereservation was submitted for the purpose of filling it by a general category candidate. We are not concerned with this aspect. What is material to note is that both in 1981 and in 1983 the vacancy for a Scheduled Tribe candidate remained unfilled and the reservation was carried forward while other candidates were recruited. In 1985, therefore, the reservation, which was for a Scheduled Tribe candidate, was being advertised for the third time.

There cannot be any dispute as to the ratio laid down in the above Judgment. But the said ratio is not applicable to the facts of this case.

Admittedly, 10 backlog vacancies meant for Scheduled Tribes out of 1992 recruitment were notified on 3-2-1997 and on the very same day, another notification

was issued for general recruitment for the vacancies that arose between 1992 and 1997, which also includes 2 ST vacancies. In the notification dated 15-3-1997 also 8 ST vacancies were notified. It may be noticed that for all the three notifications, one common examination was conducted and results were declared and recruitment had taken place. In this also, there were no sufficient number of ST candidates available. Therefore, there were only two successive recruitments that had taken place – one on 12-10-1992 and the other on 3-2-1997. Hence, it cannot be said that there were three successive recruitments to fill up the backlog vacancies reserved for ST candidates. Unless a third successive recruitment takes place and if no candidate against vacancies reserved for ST category are available, then only the petitioners can claim for dereservation of the ST vacancies and filling up of the same by them, provided that they also apply for and participate in the third recruitment. There may be cases where a limited recruitment could be possible for three successive recruitments for a particular group. In such cases, the unfilled vacancies belonging to that particular group, Scheduled Tribes or Scheduled Castes, have to be dereserved and need to be renotified.

It may be noticed that during the pendency of the writ petition in W.P.M.P.No.40754 of 1998 an interim order was passed by this Court on 27-11-1998 directing the respondents to consider the case of the petitioners for appointment as Assistant Public Prosecutors Grade-II in accordance with proviso to Rule 22(2)(h)(II) of the A.P. State and Subordinate Service Rules,1996 issued in G.O.Ms.No.436, dated 15-10-1996. Thereafter, W.V.M.P.No.1077 of 1999 was filed seeking vacation of the said order. By an Order dated 13-4-1999 the interim order passed on 27-11-1998 was vacated, since it was asserted in the counter filed by the respondents that the respondents have considered the case of the petitioners also for appointment to the post of Assistant Pubic Prosecutor Grade-II in accordance with proviso to Rule 22(2)(h)(II) of the Rules and found that the petitioners were not entitled for such appointment.

In view of the positive assertion of the respondents that three successive recruitments have not been conducted for filling up of the backlog vacancies of ST category, the case of the petitioners is only speculative and does not merit consideration. The writ petition is devoid of merits and liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No costs.

9-12-2004

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ASSISTANT REGISTRAR

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SECTION OFFICER

To

1 The Secretary to Government,

Legislative Affairs and Justice,

State of Andhra Pradesh, Hyderabad
2 Director of Prosecution, State of Andhra Pradesh,

Hyderabad
3 Chairman, State Level Police Recruitment Board,

Hyderabad

4 2CCs to Government Pleader for Home, High Court Buildings, Hyderabad (OUT)

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